

CHERICE K. HENDERSON
Claimant

MULTIMEDIA SECURITY
Respondent

CONTINENTAL NATIONAL AMERICAN GROUP
Insurance Carrier

WORKERS COMPENSATION FUND

Claimant alleges that at the time of stipulations, the functional impairment of Dr. Ernest Schlachter was stipulated into the record. A review of the evidence in the record fails to uncover any such stipulation. It is noted on the information sheet created by the Administrative Law Judge at the time of stipulations, question number 10 requests information regarding whether claimant has a permanent impairment of function rating. Underneath that question at the bottom of the page the Administrative Law Judge wrote in "Dr. Schlachter 9% BAW" [body as a whole], "19% work disability + restrictions. Dr. Melhorn 6.25% right forearm."

The Administrative Law Judge, during the motion discussion on January 30, 1997, indicated to the parties that this was not a stipulation as to admissibility of the functional impairments but rather an acknowledgment that functional impairment opinions by various doctors existed. The same form which contained the above information also contained a question regarding which evidence was being scheduled by the claimant. In that blank both Dr. Schlachter and Jim Molski's names were written indicating Dr. Schlachter's deposition was to be taken by claimant. The deposition of Dr. Schlachter was scheduled for September 17, 1996. During the deposition claimant requested information regarding Dr. Schlachter's opinion on claimant's functional impairment, work disability, and restrictions. Respondent objected to the inclusion of any reports from Dr. Schlachter for any purpose citing K.S.A. 44-510(c)(2) which states:

"Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of \$500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act."

In his Order the Administrative Law Judge ruled against the admissibility of Dr. Schlachter's opinion for the purpose of a functional impairment rating. The decision by the Administrative Law Judge to omit Dr. Schlachter's functional impairment opinion pursuant to K.S.A. 44-510(c)(2) is appropriate under the circumstances as respondent had paid for Dr. Schlachter's opinion as unauthorized medical care.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated January 31, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Ray Hodge, Wichita, KS
D. Steven Marsh, Wichita, KS
John C. Nodgaard, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director